

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

DEFENDANT'S FOIA VIOLATION

6. On September 5, 2018, MARTINEZ sent the following request to Office of Refugee Resettlement (“ORR”), a program of the Administration for Children and Families (“ACF”), an office within the HHS: “For the last seven years (2011-2018) I am seeking records for contracts, agreements and Requests for Proposals granted to General Dynamics Information Technology (“GDIT”) from ORR. I am also looking for documents sufficient to show the size of any contracts, size of contracts and other form of payments between GDIT and ORR. Any and all Non-Disclosure agreements between GDIT and ORR. All scopes of work between GDIT and ORR.” A true and correct copy of the request is attached as Exhibit A.

7. Over the next few months, MARTINEZ asked for status updates. Exhibit B.

8. On December 10, 2018, ACF informed MARTINEZ that they were unable to locate the said request. ACF offered to have the original request submitted on MARTINEZ’s behalf. A true and correct copy of the email correspondence is attached as Exhibit C.

9. On January 8, 2019, ACF acknowledged receipt of the request and assigned the following reference number: 19-F-0129. *See* Exhibit C.

10. On February 1, 2019, MARTINEZ asked ACF whether they determined the complexity of the request and the estimate of production. *See* Exhibit C.

11. On February 4, 2019, ACF notified MARTINEZ that the search has not been completed. *See* Exhibit C.

12. On March 6, 2019, MARTINEZ asked for another update. *See* Exhibit C.

13. On March 7, 2019, ACF informed MARTINEZ that the Program Office is still searching for records responsive to his request. *See* Exhibit C.

14. On March 13, 2019, ACF determined that they do not maintain the records responsive to the request. ACF added that “GDIT contracts are maintained by the Program Support Center (PSC)” and forwarded MARTINEZ’s request to “HHS (OS) for direct response. *See Exhibit C.*

15. On March 14, 2019, HHS, Office of the Secretary (“OS”) acknowledged receipt of the request: “[w]e received your request on March 13, 2019 and are referring it to the HHS Program Support Center (PSC) for direct response to you.” OS assigned 2019-00685-FOIA-OS to the request. A true and correct copy of the letter is attached as Exhibit D.

16. On March 15, 2019, PSC acknowledged receipt of the request and assigned the following reference number: 19-0171-FOIA. A true and correct copy of the acknowledgement is attached as Exhibit E.

17. In that same letter, PSC claimed that the request falls under “unusual circumstances” and “the actual processing time will depend on the complexity of the request.” *See Exhibit E.*

18. On April 15, 2019, MARTINEZ asked for an update from PSC. A true and correct copy of the correspondence is attached as Exhibit F.

19. On April 15, 2019, PSC notified MARTINEZ that they are “still in the process of reviewing the contracts,” and “it may be another couple of weeks.” *See Exhibit F.*

20. Over the next several months, MARTINEZ followed up with PSC numerous times for an update on his request, but PSC did not issue a determination on his request and did not produce the responsive records. *See Exhibit F.*

21. On July 5, 2019, MARTINEZ assumed the PSC’s no response as a denial and submitted a formal appeal: “I am formally appealing this FOIA request to your office. On

December 18, 2018, I formally requested these records for the contract between GDIT and Office of Refugee Resettlement (“ORR”). It was reassigned to PSC on March 14th and reassigned the case number: FOIA-19-0171-FOIA...In light of all this, I am asserting that ORR/PSC are not exercising due diligence responding to this Request. I respectfully request ORR/PSC respond to this appeal within 20 business days.” Exhibit G.

22. As the date of this filing, PSC has not acknowledged receipt of the appeal and has not responded to the appeal.

23. PSC has not issued a determination on the request.

24. As the date of this filing, HHS has not produced the records responsive to the request.

COUNT I – FOIA VIOLATION

25. The above paragraphs are incorporated herein.

26. HHS is an agency subject to FOIA.

27. MARTINEZ made a FOIA request to HHS on September 5, 2018.

28. HHS has failed to produce the requested records.

WHEREFORE, MARTINEZ asks the Court to:

- i. Order HHS to conduct a reasonable search for records and to produce promptly all non-exempt requested records;
- ii. Award MARTINEZ attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate

Dated: September 18, 2019

Respectfully Submitted,

/s/ Joshua Hart Burday

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